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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

ABDUL NEVAREZ and PRISCILLA NEVAREZ,  
 on behalf of themselves and all others similarly  
 situated, and SEBASTIAN DEFRANCESCO,

Plaintiffs,

vs.

FORTY NINERS FOOTBALL COMPANY, LLC,  
 a Delaware limited liability company, et al.,

Defendants.

**CLASS ACTION**

Case No.: 5:16-cv-07013-LHK (SVK)

**PLAINTIFFS' NOTICE OF MOTION AND  
 MOTION FOR FINAL APPROVAL;  
 MEMORANDUM OF POINTS AND  
 AUTHORITIES IN SUPPORT THEREOF**

Date: July 16, 2020  
 Time: 1:30 p.m.  
 Place: Courtroom 8  
 Before: Hon. Lucy H. Koh

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**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on July 16, 2020 at 1:30 p.m., in the Courtroom of the Honorable Lucy H. Koh, United States District Judge for the Northern District of California, located at 280 South 1st Street, San Jose, California, Plaintiffs in the above-captioned cases will and hereby do move the Court, in accordance with Federal Rule of Civil Procedure 23, for an Order granting final approval of the Parties' proposed Settlement Agreement and Release of Claims and the exhibits attached thereto (collectively, "Settlement Agreement"). This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Settlement Agreement, including all exhibits thereto, the accompanying Declarations of Guy B. Wallace, Edward Dattilo, Stuart Kirkpatrick, Brian P. Maschler, and Maria Lampasona, the argument of counsel, all papers and records on file in these cases, and such other matters as the Court may consider.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The proposed Settlement Agreement and Release of Claims ("Settlement" or "Settlement Agreement") provides both extensive injunctive relief and a substantial damages fund to the Plaintiff Classes. The Settlement Agreement provides comprehensive injunctive relief to remedy the violations of the Americans with Disabilities Act ("ADA") and California's Unruh Civil Rights Act ("Unruh Act"), California Civil Code Sections 51, *et seq.*, that were alleged in the Fourth Amended Complaint, including the barrier lists attached to the Complaint as Exhibits A through D. The proposed Settlement requires remedial access work with respect to all areas of Levi's Stadium, its parking, and the pedestrian rights of way leading from the parking lots to the Stadium. The remedial work to be performed is set forth in the Settlement and Exhibits A-J thereto, which include a detailed remedial plan and specifications. The Settlement will ensure that Class Members with mobility disabilities and their companions have full and equal access to the Stadium and its related facilities. The Settlement will also require Defendants to provide full and equal access to ticketing services. To ensure that Class Members receive this relief, the proposed Settlement mandates effective reporting and monitoring under the Court's continuing jurisdiction.

1 The proposed Settlement also provides a \$24 million class damages fund with no reversion to  
 2 Defendants. Class Members who make valid and timely claims on the fund will receive a minimum of  
 3 \$4,000 for each visit to Levi's Stadium in which they encountered an access barrier that caused them  
 4 difficulty, discomfort or embarrassment within the meaning of California Civil Code Sections 55.56, *et*  
 5 *seq.*, up to a maximum of \$80,000, depending upon the number of eligible claims filed. This is the  
 6 largest class damages settlement ever achieved in a case challenging physical access to a place of  
 7 public accommodation. The Settlement contains all agreements between Plaintiffs and Defendants.

8 This Court preliminarily approved the proposed Settlement on March 9, 2020. Since then, the  
 9 Parties have caused Notice of the Settlement to issue in conformance with this Court's Order Granting  
 10 Preliminary Approval. *See* Declaration of Guy B. Wallace in Support of Motion for Final Approval of  
 11 Class Action Settlement ("Wallace Decl.") ¶¶ 4-6; Declaration of Stuart Kirkpatrick in Support of  
 12 Motion for Final Approval of Class Action Settlement ("Kirkpatrick Decl.") ¶¶ 3-5; Declaration of  
 13 Edward Dattilo Re: Notice Procedures ("Dattilo Decl.") ¶¶ 4-6; Declaration of Brian P. Maschler in  
 14 Support of Motion for Final Approval of Class Action Settlement ("Maschler Decl.") ¶¶ 3-5;  
 15 Declaration of Maria Lampasona in Support of Final Approval of Class Action Settlement  
 16 ("Lampasona Decl.") ¶¶ 3-5. The deadline for objecting to the proposed Settlement or opting out of  
 17 the damages class is June 28, 2020. As of the date of this submission, there are no objections or opt-  
 18 outs. Dattilo Decl. ¶ 12.

19 The proposed Settlement is fair, adequate, and reasonable, and satisfies all of the criteria for  
 20 final approval under Rule 23 of the Federal Rules of Civil Procedure. Accordingly, Plaintiffs ask that  
 21 the Court: (i) grant final approval of the Settlement; and (ii) retain jurisdiction over the litigation and  
 22 the Parties throughout the term of the Settlement Agreement.<sup>1</sup>

## 23 **II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND**

### 24 **A. The Complaint**

25 Plaintiffs Abdul and Priscilla Nevarez filed this class action on December 7, 2016, asserting  
 26

27 <sup>1</sup> By separate motions filed concurrently herewith, Plaintiffs also ask the Court to (i) grant service  
 28 awards of \$5,000 to each of the three Named Plaintiffs and Class Representatives; and (ii) award Class  
 Counsel reasonable attorneys' fees, costs, and litigation expenses in the amount of \$13,457,152.40.



claims for both injunctive relief and damages against the Forty Niners Football Company LLC, the City of Santa Clara (“the City”), the Santa Clara Stadium Authority (the “Stadium Authority”) and Ticketmaster Entertainment, Inc. (“Ticketmaster”) based on alleged violations of the ADA, the Rehabilitation Act of 1973, California Government Code Section 11135, the California Disabled Persons Act (California Civil Code Sections 54, *et seq.*) and the California Unruh Act. *See* Compl. (ECF No. 1). Thereafter, the Complaint was amended to add the Forty Niners Stadium Management Company LLC as a Defendant (ECF No. 9).<sup>2</sup>

On April 13, 2017, pursuant to Stipulation of the Parties approved by this Court, Plaintiffs filed their Second Amended Complaint limiting their claims to the alleged violation of Titles II and III of the ADA and California’s Unruh Act, and adding Sebastian DeFrancesco as a Plaintiff. (ECF No. 47, 50). On August 1, 2017, the Court dismissed the Named Plaintiffs’ claims for individual damages against the City and Stadium Authority except for Plaintiffs Abdul and Priscilla Nevarezes’ claims for damages based on their visit to the Stadium on April 2, 2016. On August 15, 2017 the Court dismissed without prejudice Plaintiffs’ claims against Ticketmaster, finding that those claims were subject to mandatory arbitration. (ECF No. 85).

Plaintiffs filed a Third Amended Complaint on August 8, 2017 (ECF No. 78) and the operative Fourth Amended Complaint on July 27, 2018 (ECF No. 195). The Complaint includes and incorporates exhibits identifying the alleged disability access barriers in the Stadium, as well as in the Stadium’s main parking lot and the adjacent pedestrian right of way. (ECF No. 195-1 to 195-4). It also maintains class claims against the Forty Niners Defendants for Unruh Act damages. *Id.*

#### **B. Preliminary Approval**

On March 9, 2020, this Court granted preliminary approval of the proposed Settlement. *See* Order (1) Granting Preliminary Approval of Class Action Settlement; (2) Modifying Damages Class Definition; (3) Appointing Additional Injunctive Relief Class Representative; (4) Directing Notice to The Classes; and (5) Setting Date for Fairness Hearing (ECF No. 392) (“Preliminary Approval Order”). In its Preliminary Approval Order, the Court made the following modification to the

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<sup>2</sup> A full description of the facts and history are set forth in the Motion for Reasonable Attorneys’ Fees, Costs and Expenses filed concurrently with this Motion.

1 definitions of the three Plaintiff classes:

2 **Injunctive Relief Class:** 1. All persons with mobility disabilities who use  
3 wheelchairs, scooters, or other mobility aids who will attempt to purchase  
4 accessible seating for a public event at Levi's Stadium and who will be  
5 denied equal access to the Stadium's facilities, services, accessible  
6 seating, parking, amenities, and privileges, including ticketing, from  
7 December 7, 2013 through the date of the Court's Order Granting  
8 Preliminary Approval of Class Action Settlement.

9 **Companion Injunctive Relief Class:** 2. All persons who are companions  
10 of persons with mobility disabilities who use wheelchairs, scooters or  
11 other mobility aids and who have used or will use companion seating for  
12 public events located at Levi's Stadium from December 7, 2013 through  
13 the date of the Court's Order Granting Preliminary Approval of Class  
14 Action Settlement.

15 **Damages Class:** 3. All persons with mobility disabilities who use  
16 wheelchairs, scooters or other mobility aids who have purchased,  
17 attempted to purchase, or for whom third parties purchased accessible  
18 seating and who have been denied equal access to Levi's Stadium's  
19 facilities, services, accessible seating, parking, amenities, and privileges  
20 at an event controlled by the Forty Niners Football Company, LLC; Forty  
21 Niners SC Stadium Company, LLC; or Forty Niners Stadium  
22 Management Company, LLC, from April 13, 2015 through the date of the  
23 Court's Order Granting Preliminary Approval of Class Action Settlement.

24 *Id.* at 1. The first and second classes seek declaratory and injunctive relieve pursuant to Title II and  
25 Title III of the ADA and were certified pursuant to Federal Rule of Civil Procedure ("Rule") 23(b)(2).  
26 The third class seeks statutory damages under the Unruh Act and was certified pursuant to Rule  
27 23(b)(3). This Court appointed Abdul Nevarez and Sebastian DeFrancesco as class representatives for  
28 of the first class for injunctive relief, Priscilla Nevarez as representative of the second class for  
injunctive relief, and Abdul Nevarez as representative for the third class. *Id.* at 2; *see also* Order  
Granting in Part and Denying in Part Motion for Class Certification (ECF 186) ("Class Certification  
Order") at 43.

23 **C. Notice to the Class and the Class Members' Favorable Reaction**

24 After preliminary approval, the Parties effected notice pursuant to this Court's Preliminary  
25 Approval Order. Wallace Decl. ¶¶ 4-6; Kirkpatrick Decl. ¶¶ 3-5; Dattilo Decl. ¶¶ 2-6; Maschler Decl.  
26 ¶¶ 3-5; Lampasona Decl. ¶¶ 3-5.

27 Prior to the March 30, 2020 "Class Notice Date," the Court-approved settlement administrator,  
28 KCC Class Action Services, LLC ("KCC"), compiled an updated list of potential Class Members using

1 the contact information previously produced at class certification, a supplemental list covering the time  
 2 period from class certification to the date of preliminary approval, and potential Class Member contact  
 3 information obtained by Class Counsel during the pendency of this matter. *See* Preliminary Approval  
 4 Order, ECF 392 ¶¶ 13.b & 13.c; Dattilo Decl. ¶¶ 2-3. This process resulted in a list of 5,779 potential  
 5 Class Members after de-duplication. Dattilo Decl. ¶¶ 2-3. A total of 4,789 potential Class Members  
 6 had email addresses, and 495 mailing addresses were updated using the National Change of Address  
 7 Database. *See id.* ¶¶ 3, 6.

8 On March 30, 2020 KCC mailed the Court-approved long-form Notice (ECF No. 390-5) and  
 9 Claim Form (ECF No. 390-3) (collectively “Settlement Notice”) to all 5,779 potential Class Members  
 10 along with self-addressed postage prepaid return envelopes. *See id.* ¶ 4 & Ex. A. To date, 258  
 11 Settlement Notices have been returned as undeliverable. KCC has been able to resend thirty-three (33)  
 12 Settlement Notices based on its search for updated addresses. Accordingly, 5,554 (96% of the total)  
 13 potential Class Members known to the Parties have been sent the Settlement Notice. *See id.* ¶ 5. Also  
 14 on March 30, 2020, KCC emailed the Settlement Notice to the 4,789 potential Class Members (82% of  
 15 the total) with email addresses. *See id.* ¶ 6.

16 KCC also established a WCAG 2.0 AA-compliant settlement website  
 17 ([www.LewisStadiumClassActionSettlement.com](http://www.LewisStadiumClassActionSettlement.com)) to inform Class Members of the Settlement, their  
 18 rights and options, and applicable dates and deadlines; to make important case documents (including  
 19 the Settlement Agreement and operative Fourth Amended Complaint) available for review and  
 20 download by Class Members; to provide KCC’s and Class Counsel’s contact information; and to  
 21 enable Class Members to submit Damages Claim Forms and any supporting documentation  
 22 electronically, or to download a PDF version of the Damages Claim Form to mail to KCC, according  
 23 to the Class Member’s preference. *See id.* ¶ 7. KCC also established a toll-free telephone number and  
 24 email address for the case. *See id.* ¶¶ 8-9.

25 In addition, the Notice of Settlement was also provided to the twenty-four organizations listed  
 26 in Section V.C.12 of the Settlement, which were identified by Class Counsel as organizations that  
 27 serve the interests of persons with mobility disabilities. Kirkpatrick Decl. ¶ 3. Each form of notice  
 28 was published, posted or mailed by the deadlines set forth in the Settlement and the Court’s

1 Preliminary Approval Order. *See* Dattilo Decl. ¶¶ 2-6; Kirkpatrick Decl. ¶ 4 Maschler Decl. ¶¶ 3-5;  
 2 Lampasona Decl. ¶¶ 3-5.

3 The Court-approved Class Notice explained the litigation and the terms of the Settlement,  
 4 including the injunctive relief, release of claims, and amounts requested for the Named Plaintiffs’  
 5 service awards and Class Counsel’s attorneys’ fees, costs, and litigation expenses. The Notice also  
 6 informed Class Members how to object to the Settlement and provided a website and toll-free number  
 7 for Class Members to obtain further information about the Settlement or Settlement documents. Class  
 8 Members have until June 28, 2020 to object to the Settlement, to opt out of the Damages Class, and/or  
 9 to file Claim Forms. *See* Preliminary Approval Order, ECF 392 ¶ 13.h., i.

10 Class Members have responded favorably to the proposed Settlement so far. Since the  
 11 distribution of the Settlement Notice, Class Counsel has received and responded to numerous inquiries  
 12 from Class Members about the Settlement, and Class Members have expressed support for the  
 13 Settlement and the injunctive and monetary relief it provides. Wallace Decl. ¶ 7. As of the date of this  
 14 submission, there are no objections to the proposed Settlement, there are no opt-outs from the damages  
 15 class, and KCC has received 3,866 Claim Forms. Wallace Decl. ¶¶ 8-9; Dattilo Decl. ¶¶ 11-12.

### 16 **III. ARGUMENT**

#### 17 **A. The Settlement Agreement Is Fair and Reasonable and Should be Finally Approved**

##### 18 **1. The Legal Standard for Final Approval**

19 The law favors the settlement of class actions. *See, e.g., In re Hyundai and Kia Fuel Economy*  
 20 *Litig.*, 926 F.3d 539, 556 (9th Cir. 2019) (en banc). “[T]he decision to approve or reject a settlement is  
 21 committed to the sound discretion of the trial judge because he [or she] is exposed to the litigants and  
 22 their strategies, positions, and proof.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998)  
 23 (internal citations and quotations omitted).

24 To grant final approval of a settlement, “Fed. R. Civ. P. 23(e) requires the district court to  
 25 determine whether a proposed settlement is fundamentally fair, adequate, and reasonable.” *Hanlon*,  
 26 150 F.3d at 1026; *see also, Officers for Justice v. Civ. Serv. Comm’n of City and County of San*  
 27 *Francisco*, 688 F.2d 615, 625 (9th Cir. 1982) (stating that the “universally applied standard” is whether  
 28 the settlement is “fundamentally fair, adequate, and reasonable”). “It is the settlement taken as a

1 whole, rather than the individual component parts, that must be examined for overall fairness.”

2 *Hanlon*, 150 F.3d at 1026.

3 Rule 23(e)(2) states as follows:

4 a court may approve a settlement only on finding that it is fair, reasonable, and  
 5 adequate after considering whether: (A) the class representatives and class  
 6 counsel have adequately represented the class; (B) the proposal was negotiated  
 7 at arm’s length; (C) the relief provided for the class is adequate, taking into  
 8 account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness  
 of any proposed method of distributing relief to the class, including the method  
 of processing class-member claims; (ii) the terms of any proposed award of  
 attorney’s fees, including timing of payment; (D) The proposal treats class  
 members equitably relative to each other.

9 Under well-settled Ninth Circuit precedent, in order to assess a class action settlement, courts  
 10 must balance several similar factors, including the following “*Hanlon* factors”:

11 [t]he strength of plaintiff’s case; the risk, expense, complexity, and likely  
 12 duration of further litigation; the risk of maintaining class action status  
 13 throughout the trial; the amount offered in settlement; the extent of discovery  
 14 completed and the stage of the proceedings; the experience and views of counsel;  
 the presence of a governmental participant; and the reaction of the class  
 members to the proposed settlement.

15 *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012) (quoting *Hanlon*, 150 F.3d at 1026). These  
 16 same factors are also sometimes referred to as the eight “*Churchill* factors.” See, e.g., *In re Bluetooth*  
 17 *Headset Prods. Liability Litig.*, 654 F.3d 935, 946 (9th Cir. 2011) (quoting *Churchill Vill., L.L.C. v. Gen.*  
 18 *Elec.*, 361 F.3d 566, 575 (9th Cir. 2004)).

19 To satisfy appellate review, the Court must demonstrate comprehensive consideration of all  
 20 factors. However, in conducting this analysis, the Ninth Circuit has noted that ““it is the very  
 21 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce  
 22 consensual settlements.”” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 964 (9th Cir. 2009) (quoting  
 23 *Officers for Justice*, 688 F.2d at 625). Accordingly, when determining whether to grant final approval,  
 24 the Court’s role in reviewing “what is otherwise a private consensual agreement negotiated between  
 25 the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the  
 26 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,  
 27 and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” *Officers*  
 28 *for Justice*, 688 F.2d at 625; see also *In re Toys “R” Us- Delaware, Inc.- Fair & Accurate Credit*

1 *Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 449 (C.D. Cal. 2014).

2 For several reasons, the proposed Settlement clearly meets the requirements for final approval.

3 **2. The Rule 23(e)(2) Factors Weigh Strongly in Favor of Final Approval.**

4 **a. The Class Representatives and Class Counsel Have Adequately**  
 5 **Represented the Class.**

6 As this Court has previously found when it certified this case as a class action and when it  
 7 preliminarily approved the Settlement, the Class Representatives and Class Counsel have adequately  
 8 represented the Classes. As demonstrated in the Motion for Service Awards filed concurrently  
 9 herewith, the Class Representatives have no conflicts with Class Members, actively participated in the  
 10 litigation and represented the interests of the certified Plaintiff Classes. *See also* Class Certification  
 11 Order (ECF No. 186 at 24); Preliminary Approval Order (ECF No. 392 ¶ 3). As demonstrated in the  
 12 Motion for Reasonable Attorneys' Fees, Costs, and Expenses filed concurrently herewith, and  
 13 consistent with the Court's findings at Class Certification that "Plaintiffs' counsel has vigorously  
 14 litigated this case from the beginning, and ...will continue to do so," (ECF No. 186 at 24), Class  
 15 Counsel have thoroughly investigated and litigated the Class claims, obtained outstanding results on  
 16 behalf of the Classes, and have no conflicts of interest with the certified Classes. This factor supports a  
 17 finding that the Settlement is fair, reasonable and adequate. Fed. R. Civ. P. 23(e)(2)(A).

18 **b. The Settlement Was Negotiated at Arm's Length.**

19 "Where a settlement is the product of arm's-length negotiations conducted by capable and  
 20 experienced counsel, the court begins its analysis with a presumption that the settlement is fair and  
 21 reasonable." *Stemple v. RingCentral, Inc.*, No. 3:18-cv-04909-LB, 2019 U.S. Dist. LEXIS 138520, at  
 22 \*12 5 (N.D. Cal. Aug. 15, 2019) (internal quotation omitted)); *see also, In re Hyundai and Kia*, 926  
 23 F.3d at 570 ("[W]e put a good deal of stock in the product of an arm's-length, non-collusive,  
 24 negotiated resolution." ) (quoting *Rodriguez*, 563 F.3d at 965).

25 The Settlement was reached after informed negotiations supervised by two well-respected  
 26 mediators experienced in class action cases, Michael Loeb and Mark Rudy. Wallace Decl. ¶ 13. The  
 27 Parties participated in eight in-person mediations over the eighteen-month period between May 2018  
 28 and August 2019. *Id.* The first three mediations took place with Mr. Loeb; the latter five mediations



1 took place with Mr. Rudy. *Id.* Mr. Rudy made a mediator's proposal regarding the amount of class  
 2 damages, which was accepted by the Parties. Six months later, at the conclusion of the mediation  
 3 process, Mr. Rudy made a mediator's proposal regarding reasonable attorneys' fees and costs. Both  
 4 sides accepted his proposal two weeks later. *Id.* ¶ 15. All major issues regarding injunctive relief were  
 5 resolved prior to the mediation of fees and costs. *Id.*

6 **c. The Relief Offered in Settlement Is More than Adequate.**

7 **i. The Settlement Provides for Extensive Injunctive Relief and a**  
 8 **Substantial Damages Fund.**

9 **(a) Injunctive Relief**

10 The injunctive relief guaranteed by the Settlement constitutes an excellent result for the  
 11 Plaintiff Classes. The Settlement provides comprehensive injunctive relief regarding all of the claims  
 12 in the Fourth Amended Complaint, including Defendants' failure to provide physical access and  
 13 Defendants' failure to make reasonable modifications in policy and practice to ensure equal access to  
 14 the Stadium's facilities and services. The Settlement requires Defendants to remediate nearly all of the  
 15 access barriers identified by Plaintiffs' experts, as well as requiring Defendants to remove many other  
 16 access barriers that were not identified in Plaintiffs' Complaint. As this Court will recall, Plaintiffs'  
 17 Exhibit A identified 2,699 access barriers in the Stadium and its related facilities, including its parking  
 18 lots and the pedestrian right of way leading from those lots to the Stadium. The Settlement will  
 19 remediate all but 25 of the alleged barriers (*i.e.*, all but 1% of the barriers identified in the Complaint).<sup>3</sup>

20 \_\_\_\_\_  
 21 <sup>3</sup> These alleged barriers include: 18 alleged barriers regarding the lack of clear space on counters in the  
 22 Stadium concessions; 4 alleged barriers regarding the location of the accessible toilet compartment  
 23 door openings and whether they were located too far from the side wall or partition; an alleged barrier  
 24 regarding the lack of wheelchair maneuvering space at urinals; and 2 alleged barriers regarding the  
 25 existence of dirt sections of the pedestrian right of way serving the remote parking lots. Plaintiffs  
 26 compromised regarding the clear space on the counters because of a recent U.S. Access Board  
 27 interpretive guidance in which the Board stated that this type of condition did not violate the 2010  
 28 ADAS. Similarly, the parties' experts had a good-faith disagreement regarding the correct  
 interpretation of the requirement regarding the location of accessible toilet compartment door openings  
 and the side walls or partitions. The lack of clear space for wheelchair users at urinals was not  
 remediated because the Stadium's restrooms have designated accessible wheelchair stalls and the  
 Settlement provides comprehensive remediation regarding same. Settlement Agreement § III.A.1.i.,  
 Exh. A at Items 823 through 1502.1. Finally, it was not necessary to remediate the two dirt sections in  
 the pedestrian right of way because the Settlement provides compliant accessible parking in the Main  
 Lot immediately adjacent to the Stadium, and compliant paths of travel from the Main Lot to the  
 Stadium's entrances. *See Id.*, Ex. J.

Wallace Decl. ¶¶ 28-29. The Settlement will also remediate numerous other barriers in the Stadium's stairs and breastfeeding stations that were not included in the Complaint.

The detailed remedial access work that is specified in the Settlement Agreement and Exhibits A-L will bring the Stadium and its surrounding pedestrian right of way into full compliance with the 2010 ADAS and the 2019 CBC. Moreover, the Settlement provides extensive injunctive relief regarding all of the other problems with ticketing, transportation, and other services that were described by the Class Members in their declarations. *See* Appendix of Class Member Declarations (ECF No. 139). Specifically, the Settlement mandates the following access work and improvements, all of which must fully comply with the 2010 ADAS and the 2019 CBC:

Parking, Exterior Path of Travel, and Entrances. The Settlement will provide 282 accessible parking spaces immediately adjacent to the Stadium in the Main Lot. Settlement Agreement § III.A.3.a, Ex. J. This is a sufficient number of parking spaces to meet the accessible parking requirement for all of the lots that Defendants use to provide parking. Wallace Decl. ¶ 20. An accessible path of travel will connect the accessible parking spaces in the Main Lot to the primary entrances to the Stadium at Gates A and C. The accessible path of travel, clearly marked and eight feet in width (*i.e.*, double the 48 inch width specified in the 2010 ADAS and the 2019 CBC), will connect all of the accessible external features of the Stadium, including any amenities in the Main Lot (such as portable toilets and coat check), the stores and other points of interest in the Plaza, to the accessible Box Office windows, and the Stadium restaurants. Settlement Agreement §§ III.A.1.b, Exs. B, C, and J. The specifications for this remedial work are set forth in the drawings comprising Exhibit B (for the Plaza area and exterior entrances to the Stadium) and Exhibit J (for the path of travel from the parking lot) to the Settlement Agreement. The accessible path of travel to be established and maintained leading to and between the Bourbon Steak, Bourbon Pub, and Tailgate restaurants is described in further detail at Section III.A.2 of the Settlement Agreement. As a result of this access work, Class Members will no longer have to struggle with inaccessible parking, inaccessible security gates, inaccessible entrances, inaccessible ticket windows at the Box Office, and many other similar access problems that existed on the exterior of the Stadium. And, the parking adjacent to the Stadium will be priced at the lowest price Defendants charge for parking in the remote parking lots. *Id.* at § III.A.3.b.



1        Pedestrian Rights of Way Leading to the Stadium. Some Class Members may continue to  
 2 choose to park in the fifteen off-site parking lots that also serve Levi's Stadium. The pedestrian right  
 3 of way connecting those off-site parking lots to the Stadium contain numerous barriers to access,  
 4 including curb ramps that lack a flush transition to the street and have excessive running, cross,  
 5 counter, and side-flare slopes; sidewalks with excessive running and cross slopes, surface gaps, and  
 6 abrupt changes in level; and pedestrian signals that fall outside of reach range for persons using  
 7 wheelchairs and scooters. The proposed Settlement requires the City of Santa Clara to make these  
 8 portions of the pedestrian right of way fully accessible to persons with mobility disabilities. In total,  
 9 the Settlement requires the remediation of 454 non-compliant conditions, including 236 curb ramp  
 10 barriers present on 97 curb ramps, 203 sidewalk barriers, and 15 barriers related to inaccessible  
 11 pedestrian signals. *Id.* § III.A.4; Exs. H, I.

12        Stadium Box Office. To ensure an accessible box office and approach to the box office at the  
 13 Stadium, Defendants are required to remediate the box office-related barriers identified in Exhibit A to  
 14 the Settlement Agreement in the manner specified and in Section III.A.1.c. and Exhibit C of the  
 15 Settlement. This includes removing the foot bar at the base of the designated accessible ticket window  
 16 to allow a forward approach by wheelchair users, raising the existing grade to provide a level  
 17 accessible area in front of the window, using accessible queuing plans, providing signage for the  
 18 accessible window and providing all services at the accessible window that are offered to the public.  
 19 *Id.*, Ex. C notes 8, 11.

20        Interior Circulation Within the Stadium. The Settlement ensures that Class Members will have  
 21 an accessible path of travel throughout the Stadium. Defendants are required to remediate the specific  
 22 conditions in the interior path of travel identified in Exhibit A in the manner specified therein, and no  
 23 ramps in the path of travel will be permitted to have excessive running slopes. *Id.* § III.A.1.e. The  
 24 location and specifications of the accessible interior path of travel are set forth in Exhibit D.

25        Signage, Access Map, and Trained Stadium Staff. The Settlement also requires a detailed  
 26 signage plan to direct Class Members to the accessible exterior and interior features of the Stadium.  
 27 Settlement Agreement § III.A.1.e, Ex. D. Clearly marked accessible paths and overhead signage will  
 28 guide Class Members from the Main Lot to the entrances to the Stadium, and to the entrances leading

1 to the elevators. *Id.* This information will also be provided in a comprehensive access map that will  
 2 be available both electronically and on paper. *Id.* § III.D. Further, Stadium employees will be trained  
 3 on the location of accessible elevators, restrooms, and seating so that Class Members can get reliable  
 4 assistance with finding their way to their seats. *Id.* § III.F.1. Under the Settlement, Class Members  
 5 will no longer have to struggle and engage in trial and error efforts to find the accessible routes and  
 6 features within the Stadium.

7 Accessible seating, companion seating, and restrooms. The Settlement requires Defendants to  
 8 make extensive access improvements within the Stadium itself. Significantly, it requires Defendants to  
 9 perform access work to the designated accessible seating so that it strictly complies with the  
 10 requirement of the 2010 ADAS for level seating spaces. *Id.*, Ex. E. As a result of this access work,  
 11 Class Members who use wheelchairs will no longer roll around in their seating spaces because of the  
 12 excessive drainage gradient that was erroneously constructed. The number of accessible and  
 13 companion seats shall comply with the 2010 ADAS standards. Arm rests and cupholders will be  
 14 provided for companion seats to make them equivalent to standard seating. *Id.* § III.A.1.f., Ex. E.  
 15 Further, Defendants will be required to remove all of the barriers identified in the Stadium's restrooms  
 16 in accordance with the remedial work specified in Exhibit A to the Settlement. *Id.* at § III.A.1.i., Ex. A  
 17 at Items 823 through 1502.1.

18 Social and Dining Spaces and Features, Including Restaurants, Bars, Drink Rails, and Drinking  
 19 Fountains. Some of the most significant barriers in the Stadium included the general lack of accessible  
 20 tables in restaurants, accessible lowered sections in bars, and the inaccessibility of other social spaces  
 21 such as the Stadium drink rails and other counters at which patrons congregate or make purchases from  
 22 Stadium personnel. As a result of the Settlement, Defendants will provide accessible seating and bar  
 23 spaces at all locations at which food and drink is served or consumed within the Stadium. Settlement  
 24 Agreement §§ III.A.1.g, III.A.1.h, III.A.2, Ex. E. Further, the Settlement requires that all of the  
 25 Stadium's drinking fountains be made accessible. *Id.* § III.A.1.j.

26 Shops and Concessions. The Settlement requires that all of the barriers identified in the  
 27 Stadium's shops and concessions be remediated in accordance with Exhibit A. *Id.* §§ III.A.1.k, m.  
 28 This access work will provide Class Members and their companions with equal access to the Stadium's

shops and concessions.

Boxes and Suites. The Settlement will make significant access improvements to the Stadium's boxes and suites. Defendants will be required to provide accessible tables and other furniture within the boxes and suites in place of the existing inaccessible furniture. In addition, Defendants will be required to provide compliant accessible seating in the boxes and suites so that users with mobility disabilities will be able to access their seats and enjoy an unobstructed sightline to watch Stadium events. *Id.* § III.A.1.l.

Stairs and Handrail Extensions. The Settlement requires Defendants to provide compliant handrail extensions throughout the Stadium so that Class Members will be able to safely and easily transition from stairs and ramps to the landings at the top and bottom of same. *Id.* § III.A.1.n. In addition, the Settlement requires important access fixes that go beyond the barriers identified in Exhibit A to the Complaint, and which Plaintiffs would *not* have been able to obtain at trial. Specifically, the Settlement requires that Defendants remove access barriers in the Stadium's external stairways, including barriers such as abrupt nosings on the risers of the stairs that constitute a tripping hazard. *Id.* § III.A.1.s. This important access and safety work will be performed on the external stairs at Gate A and Gate C, as well as the internal stairs at Toyota Gate F, the stairs within the Stadium bowl itself, and the stairs within the United Club. *Id.*

First Aid and Breastfeeding Stations. Work required to make the Dignity Health First Aid Room on Level 300 (Main Concourse) accessible are specified in Section III.a.1.p. of the Settlement Agreement. The Settlement also requires that all of the inaccessible conditions in the Stadium's breastfeeding stations be remediated so that women with disabilities will be able to access these important features. *Id.* § III.A.1.p.

Restaurants. The Settlement requires Defendants to ensure that the Stadium restaurants remediate numerous access barriers identified in Exhibit A, including inaccessible entrances, paths of travel, dining areas, tables and restrooms. Settlement Agreement § III.A.2.

Auditorium – Section III.A.1.r. of the Settlement Agreement requires that Defendants provide an accessible means for gaining access to the stage and integrated accessible and companion seating.

Ticketing. The Settlement provides important relief regarding ticketing. Defendants will no

1 longer require Class Members to purchase or exchange standard tickets for tickets for accessible  
 2 seating at the Stadium Box Office. Instead, Class Members may now simply purchase or exchange  
 3 standard tickets for tickets for accessible seating electronically without being required to go to the Box  
 4 Office in-person. *Id.* § III.C.

5 Other Relief. The Settlement requires Defendants to provide accessible shuttles and golf carts,  
 6 to maintain the Stadium's access features in operating condition by performing maintenance on a  
 7 specific schedule, and to provide Class Members with a complaint and grievance procedure regarding  
 8 access or service problems. *Id.* §§ III.B, III.E, X.

9 Compliance Period and Deadlines. In all cases, express deadlines are set forth in the  
 10 Settlement Agreement for the completion of the specified remediation work to be undertaken.  
 11 Although these deadlines vary depending on the scope of the work and other factors identified during  
 12 the settlement negotiations, all of the remedial work must be completed within a three-year compliance  
 13 period. *Id.* § II.D.

14 Monitoring. Under the Settlement Agreement's reporting and monitoring provisions, Class  
 15 Counsel will be able to ensure that Defendants complete all of the access work and other remedial  
 16 measures required by the Settlement. The Settlement Agreement includes periodic reporting  
 17 requirements for Defendants to provide specific information regarding their progress and the status of  
 18 scheduled access work. *Id.* § X.B. Class Counsel are entitled to review designs, drawings, plans and  
 19 specifications for the access work and to conduct semi-annual inspections to monitor compliance. *Id.*  
 20 §§ X.B., XI. The Settlement provides for reasonable attorneys' fees for Class Counsel and for  
 21 reasonable expert costs on an annual basis in connection with these monitoring and enforcement  
 22 activities. *Id.* § XIV.B.

23 Continuing Jurisdiction. This Court will also retain jurisdiction in the event that the Parties are  
 24 unable to resolve any disputes regarding implementation. Settlement Agreement § XV.

25 In summary, the Settlement constitutes an excellent result for the Plaintiff Classes. It provides  
 26 Class Members with comprehensive injunctive relief, including a detailed remedial plan to remove  
 27 over 2,674 access barriers which will guarantee that the Stadium and its related facilities provide full  
 28 and equal access as required by the ADA and the Unruh Act. Wallace Decl. ¶¶ 19-29. It is doubtful

1 that this Court could have ordered greater injunctive relief if Plaintiffs prevailed at trial.

2 **(b) Damages**

3 A proposed settlement is not to be measured against “a hypothetical or speculative measure of  
4 what might have been achieved.” *Officers for Justice*, 688 F.2d at 625; *see also, In re Anthem, Inc.*  
5 *Data Breach Litig.*, 327 F.R.D. 299, 322 (N.D. Cal. 2018); *Nat’l Rural Telecomms. Coop. v.*  
6 *DIRECTV, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“[I]t is well-settled law that a proposed  
7 settlement may be acceptable even though it amounts to only a fraction of the potential recovery that  
8 might be available to the class members at trial.”).

9 The Class damages fund represents an outstanding result for the Damages Class. As an initial  
10 matter, the \$24 million damages fund in this case is the largest ever obtained in a physical access case  
11 under Title III of the ADA with Unruh Act damages claims. Wallace Decl. ¶ 47; *see also* ECF No.  
12 375-19 (settlement comparison chart). This non-reversionary fund will guarantee a substantial  
13 recovery to the Damages Class Members who make claims, with a minimum recovery of \$4,000 and a  
14 maximum recovery of \$80,000 per person depending on the number of visits during which the Class  
15 Member encountered an access barrier that caused them “difficulty, discomfort or embarrassment,”  
16 and depending on the number of valid claims filed. *Id.* §§ VII.A; VII.D; VIII.A.1.

17 The \$24 million recovery compares favorably with Plaintiffs’ estimates of total exposure. As  
18 one point of comparison, the \$24 million settlement amount represents 34.3% of the approximate \$70  
19 million outside exposure analysis calculated by Plaintiffs’ damages expert. Plaintiffs’ aggregate  
20 damages model was based on the assumption that a Class Member was in attendance at a particular  
21 event if 100% of the seats sold to that Class Member were used. If a lesser percentage of seats were  
22 actually used for a particular event, the damages calculation for that Class Member was based on a  
23 corresponding percentage of the statutory amount of \$4,000. This assumes the seats were actually sold  
24 to and used by Class Members with mobility disabilities, and that they encountered at least one barrier  
25 that caused them “difficulty, discomfort or embarrassment” on each occasion that they attend an  
26 event.<sup>4</sup> Wallace Decl. ¶ 32. Plaintiffs’ damages expert calculated interest on these claims at

27 \_\_\_\_\_  
28 <sup>4</sup> Under the Unruh Act, a plaintiff may recover the \$4,000 minimum per visit to a place of public  
accommodation, not per barrier encountered on any visit. Cal. Civ. Code § 55.56(a).

1 approximately \$9 million, using a 10% interest rate which was likely to be disputed at trial. *Id.* These  
 2 figures are based on Plaintiffs' assessment of a best-case scenario. *Id.* To have obtained such a result  
 3 at trial, Plaintiffs would have had to prove that all Damages Class Members visited the Stadium on at  
 4 least one occasion and encountered a barrier that caused them "difficulty, discomfort or  
 5 embarrassment." During expert discovery, Defendants strongly disputed that Plaintiffs' damages  
 6 model provided a reliable and accurate means of calculating the number of visits on which Class  
 7 Members encountered such barriers. They also strongly disputed that such claims could be resolved  
 8 manageably at a class trial. Indeed, the uncertain and risky nature of calculating the number of visits  
 9 by disabled class members to a public accommodation which would qualify for a \$4,000 damages  
 10 award was recognized by Judge Alsup in his decision in the *Castaneda* case, and was a factor in his  
 11 approval of the damages fund. *Castaneda v. Burger King Corp.*, No. 3:08-cv-04262-WHA, 2010 WL  
 12 2735091, at \*3 (N.D. Cal. July 12, 2010).

13 Moreover, the Damages Class's recovery of 34.3% of Plaintiffs' maximum estimated class  
 14 damages compares favorably with recoveries that have been held to be fair, reasonable, and adequate  
 15 in other class actions. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 319 (approving  
 16 recovery of 14.5% of the "projected recovery that Settlement Class Members would be entitled to if  
 17 they prevailed on their claims" and collecting authorities); *Edwards v. Nat'l Milk Producers Fed'n*,  
 18 No. 4:11-cv-04766-JSW, 2017 WL 3623734, at \*7 (N.D. Cal. June 26, 2017) (approving recovery of  
 19 30% of maximum damages); *In re Optical Disk Drive Products Antitrust Litig.*, No. 3:10-md-2143 RS,  
 20 2016 WL 7364803, at \*5 (N.D. Cal. Dec. 12, 2016) (approving 31% of maximum damages); *Winans v.*  
 21 *Emeritus Corp.*, No. 3:13-cv-03962-HSG SG, 2016 U.S. Dist. LEXIS 3212, at \*14 (N.D. Cal. Jan. 11,  
 22 2016) (approving recovery of 33.2% of maximum damages and collecting authorities).

23 **(c) The Settlement Does Not Permit Any Reversion**

24 The Settlement does not permit any reversion of any part of the Class damages fund to  
 25 Defendants. The entire \$24 million class damages fund will be distributed to Class Members who  
 26 make validated claims. Settlement Agreement § VIII.

27 **(d) The Settlement Contains a Narrow Release of Claims**

28 The Settlement only releases the claims that were alleged, or that could have been alleged,

1 based on the factual allegations of the Fourth Amended Complaint. In exchange for the equitable  
 2 relief provided for by the Agreement, Class Members and Plaintiffs release “any and all claims that are  
 3 the subject of, included within, and/or arise from this lawsuit, including without limitation, all claims,  
 4 liabilities, obligations, demands, actions, and claims under Title II and Title III of the ADA and  
 5 California Civil Code § 51, *et seq.*, and their accompanying regulations that were brought or could  
 6 have been brought based on the facts alleged in the Complaint against the Released Parties for  
 7 injunctive or declaratory relief only relating to Conditions that allegedly deny access to the facilities  
 8 specified in Exhibit A and access to Defendants’ ticketing services for wheelchair accessible and  
 9 companion seating.” *Id.* § XIII.A.1. This release only applies for the duration of the agreement, *i.e.*  
 10 three and a half years after it becomes effective. *Id.* § XVI. The scope of the release for the Damages  
 11 Class is essentially the same, except that it only releases claims for statutory damages that were  
 12 brought or could have been brought based on the facts alleged in the Complaint for the period of time  
 13 up to the date on which the Court grants Preliminary Approval of the Settlement Agreement.  
 14 Settlement at § XIII.A.2. These narrow releases fully accord with Ninth Circuit precedent. *Hesse v.*  
 15 *Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010).

16 **ii. The Risk, Expense, Complexity, and Likely Duration of Further**  
 17 **Litigation**

18 Consistent with Court’s finding at preliminary approval, the potential risks, expense,  
 19 complexity and duration of further litigation of this case support final approval. *See* Preliminary  
 20 Approval Order (ECF No. 392 ¶ 4). Courts have long recognized the inherent risks and “vagaries of  
 21 litigation,” and emphasized the comparative benefits of “immediate recovery by way of the  
 22 compromise to the mere possibility of relief in the future, after protracted and expensive litigation.”  
 23 *Nat’l Rural Telecomms. Coop.*, 221 F.R.D. at 526; *see also, In re Anthem, Inc. Data Breach Litig.*, 327  
 24 F.R.D. at 318 (delay in recovery as a result of trial and appellate proceedings weighs in favor of final  
 25 approval where “[s]ettlement provides the Class with timely, certain, and meaningful recovery”). The  
 26 “inherent” risks of protracted litigation, trial and appeal are all factors that militate in favor of  
 27 settlement in systemic access cases under the ADA. *See, e.g., Castaneda*, 2010 WL 2735091, at \*3;  
 28 *Californians for Disability Rights, Inc. v. Cal. Dept. of Transp.*, No. 4:06-cv-05125-SBA, 2010 WL



2228531, at \*3 (N.D. Cal. June 2, 2010) (“The settlement affords significant and immediate relief that may never have materialized had the trial concluded.”). Proceeding to the series of short trials regarding groups of barriers that this Court had ordered (and the inevitable appeals of those decisions) would have added many years to the resolution of this case. Each trial would have required the presentation of extensive expert testimony, thereby increasing the expense of these already lengthy proceedings. Given the importance of the accessibility of the Stadium to the Class Members lives, the potential for years of delayed recovery is a significant concern. Considered against the risks of continued litigation, and the importance of the accessibility of the Stadium and its related facilities to the Class Members, the totality of relief provided under the proposed Settlement is fair, reasonable, and adequate. Wallace Decl. ¶¶ 38-46.

iii. **The Settlement Provides Important Procedural Protections to the Class Members, and Provides an Effective Method for Distributing Monetary Relief to the Class.**

Members of the Injunctive Relief and Companion Classes, as well as Damages Class Members who do not opt out, have been given the opportunity to object to the settlement and to appear at the Final Approval/Fairness Hearing in order to have their objections heard by the Court. Damages Class Members who did not already opt out of the case at the class certification stage have been given another opportunity to opt-out of the proposed Settlement should they so desire. Settlement Agreement § VI. This satisfies the requirements of Rule 23(e)(4).

The Claims Process set forth in the Settlement Agreement also provides Damages Class Members with a full and fair opportunity to submit claims for damages and, should they disagree with Defendants’ records regarding the number of events that they attended at the Stadium, to provide documentation and/or an explanation to show a different number of visits. Settlement Agreement § VII.G, H. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. Damages payments to eligible Damages Class Members will be distributed in the form of checks and checks returned as undeliverable will be traced and re-mailed. *Id.* § VIII.A.3 & 4. These procedural safeguards further support final approval, under both Rule 23(e)(2)(A)(ii) & D, and the *Hanlon/Churchill* factors.



1                   d.       **The Settlement Provides an Equitable Plan of Allocation and Does Not**  
 2                   **Grant Preferential Treatment to the Named Plaintiffs.**

3               Consistent with Rule 23(e)(2)(D), the Settlement provides for an equitable plan of allocation of  
 4 money damages without granting preferential treatment to any particular Class Members. Settlement  
 5 at § VII.A. All of the class members who make claims that confirm, as required under applicable law,  
 6 that they have mobility disabilities and encountered one or more barriers at Levi's Stadium or its  
 7 related facilities that caused them "difficulty, discomfort or embarrassment" will be able to recover a  
 8 minimum of \$4,000 or a maximum of \$80,000 depending on the number of visits in which they  
 9 encountered such barriers, and the number of validated claims filed. This objective allocation plan  
 10 does not grant preferential treatment to any member of the Damages Class, or to the Named Plaintiffs,  
 11 who are subject to the same damages allocation plan as the absent Class Members.

12               As discussed below, subject to Court approval, the Named Plaintiffs would also receive service  
 13 awards not to exceed \$5,000 each, which Plaintiffs submit are fair and reasonable payments to  
 14 recognize and compensate the Named Plaintiffs for the efforts and risks they took in stepping forward  
 15 to assert claims, their participation in discovery and depositions, and the work done on behalf of the  
 16 Plaintiff Classes to prosecute the claims. *See* Plaintiffs' Motion for Service Awards (ECF No. 394)  
 17 and discussion *infra* at § III.B.

18               3.       **The Remaining Churchill/Hanlon Factors Also Weigh Strongly in Favor of Final**  
 19                   **Approval.**

20               a.       **The Strength of Plaintiffs' Case**

21               There can be no reasonable dispute that Plaintiffs developed a strong case on the merits. However,  
 22 the Parties disputed which disability access standard applied to the Stadium (the 2010 Americans with  
 23 Disabilities Act Standards ("2010 ADAS") or the 1991 Americans with Disabilities Act Access Guidelines  
 24 ("1991 ADAAG"). This issue involved novel and difficult questions of law, as well as complex factual  
 25 disputes regarding groundbreaking at the site and the start of construction. The resolution of these legal  
 26 and factual issues was therefore uncertain. If Plaintiffs had lost on this issue, they would not have been  
 27 able to seek relief regarding many access barriers that were covered by the 2010 ADAS, but not by the  
 28 older and more lenient 1991 ADAAG. As this Court has stated, "legal uncertainty favors approval." *In re*

1 *Yahoo Mail Litig.*, Nos. 13-CV-4980-LHK, 13-CV-4989-LHK, 13-CV-5326-LHK, 13-CV-5388-LHK,  
 2 2016 U.S. Dist. LEXIS 115056, at \*20 (N.D. Cal. Aug. 25, 2016); *see also*, *Dickey v. Advanced Micro*  
 3 *Devices, Inc.*, No. 15-cv-04922-HSG, 2020 U.S. Dist. LEXIS 30440, at \*13 (N.D. Cal. Feb 21, 2020)  
 4 (“Generally, unless the settlement is clearly inadequate, its acceptance and approval are preferable to  
 5 lengthy and expensive litigation with uncertain results.”) (quoting *Ching v. Siemens Indus., Inc.*, No. 3:11-  
 6 cv-04838-MEJ, 2014 U.S. Dist. LEXIS 89002, at \*13 (N.D. Cal. June 27, 2014)). In contrast, pursuant to  
 7 the Settlement it is guaranteed that all areas of the Stadium will be brought into substantial compliance with  
 8 the 2010 ADAS. Accordingly, this factor favors final approval.

9 **b. The Risk of Maintaining Class Action Status Through Trial**

10 This was the first disability access case in which a money damages class was certified  
 11 subsequent to the Supreme Court’s decision in *Walmart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).  
 12 Defendants argued vigorously against certification of a damages class, contending that certification of  
 13 such a class was precluded by the allegedly individualized questions raised by establishing entitlement  
 14 to money damages under California Civil Code Section 55.56. Post *Dukes*, the Ninth Circuit has not  
 15 yet addressed the propriety of class certification of a disability access case for money damages under  
 16 Fed. R. Civ. Proc. 23(b)(3). Thus, there was a significant risk that Plaintiffs would not be able to  
 17 maintain class status through trial with respect to the damages class, and/or that there would be a risk  
 18 of decertification on appeal. Accordingly, this factor weighs in favor of approving the class settlement.

19 **c. The Extent of Discovery Completed and the Stage of the Proceedings**

20 Courts require the parties to have conducted sufficient discovery to be able to make an  
 21 informed decision about the value and risks of the action and come to a fair settlement. *Linney v.*  
 22 *Cellular Alaska P’ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). The purpose of the Ninth Circuit’s  
 23 consideration of the extent of the parties’ discovery is to ensure that counsel negotiating the pending  
 24 settlement were fully informed of the facts and issues at stake. *Rodriguez*, 563 F.3d at 967 (affirming  
 25 the district court’s finding that discovery had been extensive where the court “could find that counsel  
 26 had a good grasp on the merits of their case before settlement talks began”); *Hanlon*, 150 F.3d at 1027  
 27 (affirming the district court’s approval of class settlement where “[t]here [was] no evidence to suggest  
 28

1 that the settlement was negotiated in haste or in the absence of information illuminating the value of  
2 plaintiffs' claims").

3 As this Court found when preliminarily approving the Settlement, "substantial evaluation of the  
4 merits, through extensive litigation, including motion practice, [and] fact and expert discovery over the  
5 three years since filing, has been conducted such that Counsel for the Parties are able to reasonably  
6 evaluate their respective positions." Preliminary Approval Order (ECF 392 ¶ 4). Indeed, at the time of  
7 settlement the Parties had completed fact and expert discovery, and were in the process of preparing  
8 for trial. These and other proceedings in the case produced a thorough pre-settlement vetting of the  
9 factual and legal bases for Plaintiffs' claims and the key defenses thereto. Thus, by the time the Parties  
10 reached a settlement, the litigation had proceeded to a point in which the Parties had a clear view of the  
11 strengths and weaknesses of their cases and were able to make a well-informed decision about  
12 settlement. *Id.* ¶ 41.

13 In *In re Anthem, Inc. Data Breach Litigation*, this Court found that this factor favored final  
14 approval where the parties "engaged in extensive motion practice, including fifteen discovery  
15 motions," reached a settlement after class-certification discovery and briefing, and had completed fact  
16 and expert discovery, including the review of 3.8 million pages of documents. 327 F.R.D. at 320.  
17 While the parties took and defended far more depositions in *In re Anthem* than in this case, the overall  
18 scope of discovery and the stage of proceedings prior to settlement was similar. Accordingly, this  
19 factor further supports final approval.

20 **d. The Experience and Views of Counsel**

21 Courts must also consider the experience and views of counsel regarding the settlement. *See*  
22 *Churchill Vill., L.L.C.*, 361 F.3d at 576-77. "Parties represented by competent counsel are better  
23 positioned than courts to produce a settlement that fairly reflects each party's expected outcome in  
24 litigation." *See Toys "R" Us*, 295 F.R.D. at 455 (quoting *In re Pac. Enters. Sec. Litig.*, 47 F.3d 373,  
25 378 (9th Cir. 1995)).

26 Class Counsel have extensive experience litigating and settling systemic disability access and  
27 other complex class actions. Wallace Decl. ¶ 44. Under applicable law, the fact that qualified and  
28 well-informed counsel endorse the proposed settlement as being fair, reasonable, and adequate weighs

1 in favor of approval. *See, e.g., In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 320; *Koller v. Med*  
 2 *Foods, Inc.*, No. 3:14-CV-2400-RS, 2018 U.S. Dist. LEXIS 231901, at \*10-11 (N.D. Cal. Aug. 29,  
 3 2018); *Brown v. Hain Celestial Grp., Inc.*, No. 3:11-cv-03082-LB, 2016 U.S. Dist. LEXIS 19275, at  
 4 \*15-16 (N.D. Cal. Feb. 17, 2016).

5 **e. The Presence of a Governmental Participant**

6 In determining the fairness of a settlement, the Court should consider whether the proposed  
 7 settlement includes a governmental participant. Although the City of Santa Clara and the Santa Clara  
 8 Stadium Authority are government entities and Defendants herein, the Ninth Circuit in *Hanlon* was  
 9 referring to settlements in which the government was involved as a prosecutor. *See Johnson v. Shaffer*,  
 10 No. 2:12-cv-1059-KJM-ACP, 2016 WL 3027744, at \*5 (E.D. Cal. May 27, 2016) (citing *Hanlon*, 150  
 11 F.3d at 1026); *Marshall v. Holiday Magic, Inc.*, 550 F.2d 1173, 1178 (9th Cir. 1977) (citing SEC  
 12 approval of settlement as weighing in favor of approval, where SEC was prosecuting a parallel action).  
 13 Accordingly, this factor weighs neither for nor against final approval of the Settlement Agreement.  
 14 *See, e.g., In re Animation Workers Antitrust Litig.*, No. 5:14-cv-04062-LHK, 2016 WL 6841655, at \*2  
 15 (N.D. Cal. Nov. 11, 2016) (where there is no governmental participant, that factor is “irrelevant”).

16 **f. The Reaction of the Class Members to the Proposed Settlement**

17 In determining the fairness of a settlement, the Court should consider class member objections  
 18 to the settlement. The absence of a large number of objections to a proposed settlement raises a strong  
 19 presumption that the terms of the agreement are fair. *See, e.g., Churchill Vill., L.L.C.*, 361 F.3d at 577  
 20 (approving a settlement where “only 45 of the approximately 90,000 [.005 percent] notified class  
 21 members objected to the settlement”); *In re Anthem, Inc. Data Breach Litig.*, 327 F.R.D. at 321; *Nat’l*  
 22 *Rural Telecomms. Coop.*, 221 F.R.D. at 529. As discussed, as of the date of this submission, no one  
 23 has objected to the proposed Settlement. Wallace Decl. ¶ 8.

24 Moreover, as of the date of this submission, no class member has requested to opt out of the  
 25 proposed Settlement. *Id.* Finally, notice was mailed and/or emailed to 5,779 potential members of the  
 26 Damages Class. *Id.* ¶ 9. As of the date of this submission, 3,866 class members have submitted Claim  
 27 Forms. The absence of opts outs, and the high claims rate, also indicate a favorable reaction by the  
 28 class members to the proposed settlement, and provide further support for final approval. *See, e.g.,*

1 *Perkins v. LinkedIn Corp.*, No. 5:13-cv-04303-LHK, 2016 U.S. Dist. LEXIS 18649, at \*9 (N.D. Cal.  
 2 Feb. 16, 2016) (“low rates of objections and opt-outs are ‘indicia of the approval of the class’”)  
 3 (citation omitted); *Dickey*, 2020 U.S. Dist. LEXIS 30440, at \*17 (N.D. Cal. Feb. 21, 2020) (“[t]he  
 4 27.4% claims rate is an excellent result in the Court’s experience” that supports final approval) (citing  
 5 *In re TracFone Unlimited Serv. Plan Litig.*, 112 F. Supp. 3d 993, 1006 (N.D. Cal. 2015)). For these  
 6 reasons, this factor also favors approval.

7 **B. The Proposed Service Awards Should Be Approved**

8 As discussed in Plaintiffs’ Motion for Service Awards (ECF No. 394) and the accompanying  
 9 declarations, Plaintiffs request that this Court approve service awards to Class Representatives Abdul  
 10 Nevarez, Priscilla Nevarez, and Sebastian DeFrancesco for their important and substantial  
 11 contributions to the Plaintiff Classes with respect to both the litigation and settlement of this matter.  
 12 As of the date of this submission, no one has objected to the proposed service awards. Wallace Decl. ¶  
 13 8. Accordingly, for the reasons stated in their papers, Plaintiffs respectfully request that this Court  
 14 grant the requested awards.

15 **C. Plaintiffs’ Motion for Reasonable Attorneys’ Fees, Costs and Litigation Expenses Should**  
 16 **Be Approved**

17 Plaintiffs’ Motion for an Award of Reasonable Attorneys’ Fees, Costs and Expenses, and the  
 18 points and authorities in support of their request, are the subject of separate submissions to the Court.  
 19 In accordance with Section XIV.A of the Settlement Agreement, Plaintiffs seek an award of reasonable  
 20 attorneys’ fees, costs and expenses in the amount of \$13,457,152.40.

21 As of the date of this submission, no class member has objected to the proposed award of  
 22 attorneys’ fees, costs and litigation expenses since the Class Notice was disseminated. Wallace Decl.  
 23 ¶ 8. As explained in Plaintiffs’ Motion Reasonable Attorneys’ Fees, Costs and Expenses, the relief  
 24 obtained here constitutes a truly “excellent result” for the class and fully supports the requested award.  
 25 Accordingly, Plaintiffs respectfully request that the Court grant the requested amount in full.

26 **IV. CONCLUSION**

27 For the reasons stated herein, Plaintiffs respectfully request that the Court (1) grant final  
 28 approval of the Settlement Agreement; and (2) retain jurisdiction over the litigation and the Parties

1 throughout the term of the Settlement Agreement. By separate motions files concurrently herewith,  
2 Plaintiffs also request that the Court grant service awards of \$5,000 to each of the three Class  
3 Representatives, and award Class Counsel reasonable attorneys' fees, costs, and litigation expenses in  
4 the amount of \$13,457,152.40, as set forth in the Settlement.

5 Dated: May 25, 2020

Respectfully submitted,

6 GOLDSTEIN, BORGEN, DARDARIAN & HO

7  
8 /s/ Guy B. Wallace

Guy B. Wallace

9 *Attorneys for Plaintiffs and the Certified Classes*  
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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States District Court, Northern District of California, by using the Court's CM/ECF system on May 25, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

Dated: May 25, 2020

/s/ Guy B. Wallace  
Guy B. Wallace